
NYS ASSOCIATION OF SERVICE STATIONS & REPAIR SHOPS, INC.

STATE INSURANCE FUND SAFETY GROUP 536 MEMBERS

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Massachusetts Shell Dealers Win \$3.3 Million Damages In Pricing Case

In what can be a landmark case, Marcoux v. Shell Oil, eight Shell dealers have been awarded \$3.3 million in damages in a federal jury trial in Boston. The suit claimed that the Shell used unfair practices and Dealer Tank Wagon pricing to force them out of business. The case is expected to have a rippling affect across the U.S. as dealers bring class action lawsuits using the same or similar claims. At least two actions are currently pending – one in California, and the other in New York.

In its verdict the jury found that:

- Shell was in violation the Petroleum Marketing Practices Act (PMPA) when it eliminated the rent subsidy program. This was viewed as constructive termination of the Shell franchise agreements.
- The jury found that the terms of Shell's lease, which went to 2000 Shell dealers across the country were so oppressive that dealers were unable to compete, and were forced to go out of business. Shell than in many cases took over the stations. The jury decided that Shell's new leases were a constructive non-renewal of the franchise agreement.
- Shell did not set it prices in good faith and were unreasonable under Massachusetts State law constituting a violating the Uniform Commercial Code.

The Judge is still deciding whether to award punitive damages to the dealers. Attorneys for the eight dealers, also represent 50 additional New England franchisees that have brought suit. The cases combined could potentially net \$30 million-\$60 million for the dealers. It is expected that Shell will appeal.

Volumetric Ethanol Excise Tax Credit

A little publicized part of the American Jobs Creation Act Of 2004, is effecting dealers of gasohol. Prior to the enactment, the Federal Excise Tax on gasohol was to be 13.3 cents per gallon, versus the Federal Excise Tax on gasoline of 18.4 cents per gallon. This 5.1 cent per gallon tax break for consumers has been repealed. Effective January 1, 2005, the Volumetric Ethanol Excise Tax Credit of 51 cents per gallon of ethanol has been put in its place. This credit is available for those who blend ethanol and gasoline to make gasohol. In theory, gasohol manufacturers will pass this savings on down the line, and the final cost to consumers will remain the same. The Association wishes to hear from its gasohol dealers how their tank wagon prices were affected as we rang in the New Year.

DMV Proposes Downstate Inspection Fee

DMV recently announced a proposed fee for the upcoming downstate OBD-II Emission Inspection Program. The fee for a dyno inspection, 1995 and older vehicles and for OBD-II Emission Inspection will be the same, \$37.00. This includes the safety portion of the inspection. The downside is that DMV is eliminating the provision that prohibits discounting the fee. This will mean that, if a downstate inspection station wants to charge less then \$37.00, it can. The upstate fee for OBD-II inspections is to remain firm at \$21.00.

With the pricing difference between the two regions, we ask did you get a good or a bad deal? Please let us know by faxing a response to the questions below to 518-452-1955.

For downstate dealers, are you satisfied with the proposed fee of \$37.00? Yes ___ No ___

For downstate dealers, would you rather lock in at a lower fee for OBD-II? Yes ___ No ___

For upstate dealers, are you satisfied with the current locked in fee of \$21.00? Yes ___ No ___

For upstate dealers, would you rather a higher fee, but allow stations to charge less than that for OBD-II? Yes ___ No ___

The Association knows that we are not receiving proper compensation for performing inspections. The State takes the position that if you do not like the fee, you may still repair vehicles and not be an inspection station. Of course, we disagree. We will continue our effort toward a fair and equitable fee. For now we need to know what you think of the proposed fee, which will probably become effective April 1, 2005, as soon as downstate stations have the new equipment up and running.

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Senate Passes Minimum Wage Increase

The New York State Legislature overrode the governor's veto and passed legislation (S.7682-A), sponsored by Senator Olga Mendez (R-D-I-L, Manhattan/Bronx), to raise New York's minimum wage to \$7.15 per hour from the existing \$5.15 level, or a \$2.00 increase. The bill will establish a state minimum wage of \$6.00 per hour on January 1, 2005, \$6.75 per hour on January 1, 2006, and \$7.15 per hour on January 1, 2007.

Food service workers who routinely collect tips when rendering services would also receive proportionate increases in the sub-minimum wage, known as the tip wage. Under the legislation, the minimum tip wage would be raised from the existing \$3.30 level to \$3.85 per hour on January 1, 2005, \$4.35 per hour on January 1, 2006, and \$4.60 per hour on January 1, 2007.

OBD-II Inspection Readiness Checks

Until OBD-II monitors have run to completion, a vehicle is unaware of, and unable to, report the condition of the emission system. The readiness evaluation of the OBD-II inspection could possibly be the only reason why a vehicle fails New York's emissions inspection. How to perform drive cycles to reset monitors has been of utmost concern to inspectors and customers alike. To aid in performing the tricky task of resetting monitors, we have inserted a DMV memo on the subject in your bulletin. We also have included a letter, which may assist you in explaining the process to your customers.



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We Need Your Help Supporting Right-To-Repair Legislative Efforts

Our Association has been asked to reach out to our membership for help with the Right-to-Repair Act legislative efforts. If your business does auto repair you probably have had or will soon experience personally calling a customer to inform them that your shop was unable to service or repair their car because of a lack of information available and you had to send them to the auto dealership. You need to help us help you.

When you experience a situation where you turn your customer away have them write a letter "To whom it may concern" detailing their experience and the inconvenience it caused them because you do not have the information necessary to repair their vehicle. Your customers will be more than happy to help. If this situation goes unchecked your customer will not only be inconvenienced but repair cost will skyrocket.

When your customer contacts their congressmen, assemblymen or senators, mail us a copy of the letter, or fax it to 518-452-1955. We will use these testimonials to show both state and federal legislators that there is need for this legislation. The manufacturers constantly make the claim that good shops can get the information they need to service and repair any vehicle. This may be true, but the cost is prohibitive. Help us prove that we need and are entitled to this information.

Adolescent Tobacco Use Prevention Act (ATUPA) Amended

A recent letter sent to tobacco retailers indicates a change to the ATUPA law. Effective December 27, 2004, Chapter 513 of the Laws of 2004, amended Article 13-F of the New York State Public Health Law, also known as the Adolescent Tobacco Use Prevention Act (ATUPA), regarding minimum package sizes for tobacco products that can be legally sold or distributed in New York State.

The amendment sets the minimum size requirements for tobacco products, herbal cigarettes and rolling papers. In particular, the law will now prohibit the manufacture, sale or distribution of: (a) any pack or other container of cigarettes containing fewer than 20 cigarettes; (b) any package of roll-your-own tobacco containing less than 0.6 ounces of tobacco; or (c) any package of cigarette wrapping papers, wrapping leaves or tubes containing fewer than 20 sheets, leaves or tubes. Please note that the amendment does not pertain to the sale of cigars or cigar wrapper's.

The letter further advises that violations of minimum package sizes will carry a civil fine of a minimum of three hundred dollars, but not to exceed one thousand dollars for a first violation, and a minimum of five hundred dollars, but not to exceed one thousand five hundred dollars for each subsequent violation.

If you have any questions regarding any of this information or information concerning our certified training program please contact us at 518 452-4367.

New York State Service Stations Benefit from Pollution Assessment Program

Pass by a service station or convenience store and invariably one thinks of handy shopping, quick snacks and unfortunately, rising gas prices. But what isn't always seen is the commitment many owners of these stations have to developing and maintaining environmentally responsible enterprises that efficiently reduce the potential for contamination of the air, water and land, and help conserve natural resources.

The New York State Association of Service Stations, supported by a grant from Empire State Development, is undertaking a pollution prevention program for service stations, auto repair shops and related businesses to further aid retailers in this industry meet these commitments.

This new program, called the "Pollution Prevention," or "P2" Program, is intended to identify possible changes in equipment, processes or other practices that can prevent pollution and save business owners money.

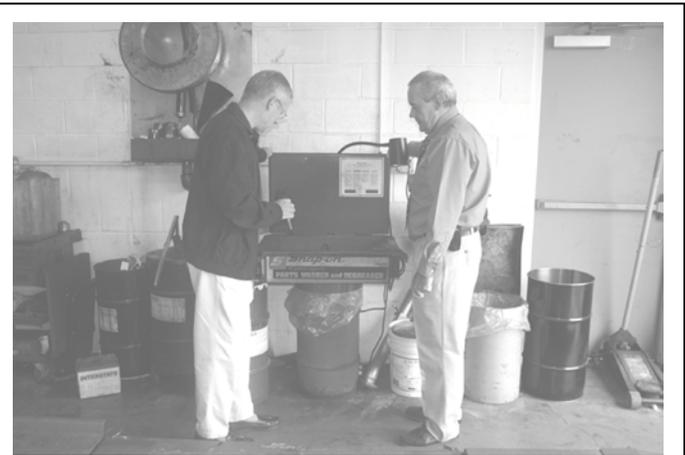
Together with WOH Environment and Energy Solutions, TRC Solutions, Allen Engineering and the New York State Economic Development Council, they have designed the program with simple goals:

- Save money for business owners by reducing the potential for normal business operations to produce waste, consume unnecessary energy or otherwise damage the environment;
- Recognize businesses that participate in the program and encourage them to continue operating in an environmentally friendly manner; and,
- Demonstrate that the program works by totaling up the dollars saved and the amount of pollution prevented.

P2 is a completely voluntary program, free of charge to service station dealers who are members of the New York State Association of Service Stations and Repair Shops and affiliated trade groups. The assessment is not a compliance audit. It simply encourages good business practices that protect the environment and save proprietors money.

Participation requires only a few hours of the business proprietors' time. It begins with a call to schedule a convenient time for an assessor to visit. Once the proprietor has provided, in advance, background information about their business goals and operations, they meet on-site at their business locations with the P2 experts who will conduct a P2 Assessment of their business. The assessor — a professional environmental consultant — develops his/her recommendations by reviewing the information provided by the business owner or manager, and then inspecting and assessing the facility using a basic "checklist" that has been developed for reviewing customary items.

Independent observations are made about such items as materials usage and handling, the structure and practices in the building, energy usage, and cleaning and waste disposal practices. Once the assessment is completed, recommendations for improvement are then given to the business owner or manager, with an explanation, for consideration. The P2



P2 Project Director, Peter Lanahan, discusses aspects of the Pollution Prevention Program assessment with Bruce Mance, proprietor of Guilderland Mobil, Inc., and member of the New York State Association of Service Stations & Repair Shops, Inc.

Assessment Team is available to answer any questions the business owner or manager may have on the report, recommendations, and implementation. These recommendations can materially add to the bottom line of a small business.

Each recommendation is supported by a rationale that includes the estimated initial costs of adopting the recommendation and the projected long-term savings, as well as an outline of the potential environmental benefits that can result.

While these recommendations will be encouraged, there is no obligation that they be adopted. WOH Environment & Energy Solutions contractors and trade association field representatives are available to assist the business owners in obtaining State grants or private sector funding necessary or helpful in making investments in new equipment or adopting any process changes explained in the recommendations. One such funding program — the Environmental Investment Program — is administered by Empire State Development. Another is called the Energy Smart program, operated by the New York State Energy Research and Development Authority.

"The service station/repair shop industry of today is light years away from when I was in business. We thought of marketing first, second and third. But today we think of our environment obligations first. It's too expensive not to," said Ralph Bombardiere, Executive Director of the New York State Association of Service Stations & Repair Shops, Inc.

There are numerous examples where P2 programs have helped protect the environment and save money. At ITT Automotive-Fluid Handling Systems in Gates, NY, an environmentally friendly wash system replaced one using hazardous chemicals. The new process and other innovative process changes saved more than \$600,000 annually in utility charges, disposal costs, labor and materials. Smaller businesses also benefit. Bob's Transmission and Clutch in Simi Valley, CA, switched from solvent to aqueous parts cleaning, saving \$7,600 after 8 months, with an initial investment of \$5000 for the new unit.

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Pollution Assessment Program (cont.)

The value of the P2 Assessment is estimated to be several hundreds of dollars, which includes the time of the assessor to do the review and write a report, plus the travel costs and the overhead of running the P2 Program. However, the assessment is free to members of the New York State Association of Service Stations and Repair Shops under the Empire State Development program as they are committed to helping their members protect the environment and save money for small businessmen and women. "The Association is proud that it is able to provide this program. Now all that is needed is for the industry to get on board and take advantage of this extraordinary program where there is a win-win situation for not only the Association, but each and every individual who participates," said Mr. Bombardiere.

A number of auto repair shops in the eastern half of New York State have participated in this process during the last few months. The P2 Assessment teams have noted recommendations in areas such as Material Use and Storage, Air and Water Pollution Control, Lighting Equipment and Heating Systems. Examples include:

- exchanging T-12 fluorescent lighting with T-8 fluorescents
- replacing existing heating systems with more efficient models
- installing occupancy sensors and/or mechanical timers
- substituting an environmentally friendly and less expensive coated magnesium chloride salt for calcium chloride salt
- posting stickers or placards around fueling islands to discourage topping off" tanks, eliminating the potential for fuel spillage
- the installation of drum and bulk storage containment

In recognition of the community benefits of membership in the P2 Program, the New York State Association of Service Stations and Repair Shops recognizes program participants by awarding them a special logo for display in customer areas, and also publicizes each member's participation the program through news articles and special events.

A free telephone service — 1-800-801-9112 — has been established where any member of the New York State Association of Service Stations and Repair Shops, Inc. can schedule an assessment. Members may also contact their Field Representative at the Association for assistance in scheduling an assessment.